
Briefing

Proposed Update to Companies Legislation



INSTITUTE OF DIRECTORS
IN IRELAND

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The Companies (Corporate Enforcement Authority) Bill 2021 (the “**Bill**”) was published on 3 September 2021 and is making its way through the Houses of the Oireachtas. The primary purpose of the Bill is to transform the Office of the Director of Corporate Enforcement into a statutory and independent agency (to be known as the Corporate Enforcement Authority or “**CEA**”) with additional resources to investigate and prosecute so-called white-collar crime. However, the Bill also proposes a range of changes to companies legislation generally, on which this briefing focusses.

The Bill has been preceded by a December 2018 General Scheme (the “**Scheme**”), the progress of which was interrupted by the 2020 General Election. The Bill is modelled closely on the Scheme with some modifications although some proposals in the Scheme have been omitted from the Bill. The Bill is currently at committee stage in the Dáil, where the list of proposed amendments for debate seek to make minimal changes to the Bill as initiated. It remains to be seen whether more substantial changes, or further proposals from the Scheme, are proposed to be introduced into the Bill, by way of amendments at a later stage of its legislative journey.

As mentioned, apart from the creation of the CEA, the Bill proposes to make a number of welcome changes to the Companies Act 2014 (the “**Act**”), designed to clarify certain matters and remove anomalies in the Act. In most part, the changes follow recommendations of the Company Law Review Group (the “**CLRG**”). Over a number of years the CLRG and others (such as the Business Law Committee of the Law Society of Ireland) have made submissions to the Department of Trade and Enterprise to correct anomalies in the Act. In some instances the change proposed is merely the re-insertion of text that was unintentionally not carried over from the Companies Act 1963 (as amended), legislation the Act replaced through consolidation and reform.

However, not every CLRG recommendation is reflected in the Bill so it is expected that further changes will be made to the Bill to incorporate more of the submissions to date.

Most of the proposed amendments to the Act that the Bill would make are technical in nature but nonetheless are important. They include:

- clarification as to the uses to which a company's share premium account may be put;
- clarification that a commonly used structure in group reorganisations, in which a company transfers its undertaking to another company in consideration for a share issue to the transferring company's shareholders, is lawful where the transferring company has distributable reserves that are at least equal to the value of the undertaking transferred;
- where a company acquires its own shares through a merger or division, those shares can be treated as treasury shares and may be cancelled or re-issued;
- a reduction of capital effected in accordance with the Act is not to be a distribution under the Act and does not require the rules on distributions to be followed (in addition to the processes to effect the capital reduction);
- the acquisition by an unlimited company of its own shares will not require the use of distributable reserves;
- a company secretary, who is a natural person, must be at least 18 years old; and
- a director will be required to provide the Companies Registration Office (the "CRO") with the director's PPSN (or equivalent ID) when presenting certain documents. This is intended to ensure that there is no confusion as to the identify of a director where common names are frequently encountered by the CRO.

As mentioned, many additional submissions have been made to the Department to remove what are considered to be anomalies in the Act and it is hoped that many more of these as-yet-unimplemented changes will be included in the Bill before it is enacted. To take one example, a domestic merger of companies is possible under the Act (and is well-used in practice), provided one company is a company limited by shares so that (for example) two designated activity companies cannot merge under the process.

When the Act was being developed in 2012, the then Minister for Jobs, Enterprise and Innovation emphasised that the Bill would "*make it easier for companies to know and understand their legal obligations ... implement a series of major reforms to reduce red tape ... make it easier and cheaper to run a company in Ireland and ... make a real difference to our international competitiveness.*" Broadly speaking the Act achieved those objectives and the changes discussed above, when implemented, will further those worthy and helpful aims.

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